

REMARKS

Applicants respectfully request reconsideration of this application, and reconsideration of Paper No. 10. Upon entry of this Amendment, claims 1-7 and 11-20 will remain pending in this application. The changes to claim 5 are supported by previous claims 8-10 (which are canceled by this Amendment) and therefore do not present any new issues which require a new search and/or consideration. Applicants thus respectfully requests that the Amendment be entered and fully considered. Furthermore, no new matter is incorporated by this Amendment.

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Claims 5 and 8-18 are rejected under 35 U.S.C. 112, second paragraph, as purportedly indefinite.

The Office Action asserts that the terms “skin structures”, “micronutrients of the skin”, and “sensorial agents” render claim 5 indefinite.

In response, claim 5 has been amended so that each of the above terms is defined by the corresponding species which were previously recited in claims 8-10. Hence, the metes and bounds of these terms would be readily apparent to those of ordinary skill in the art.

The above Remarks overcome this rejection. Thus, reconsideration and withdrawal of the rejection are respectfully requested.

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Claims 1-20 are rejected under 35 U.S.C. 103(a) as purportedly obvious based on Rinaldi et al. (U.S. Pat. No. 5,891,470) in view of Huc et al. (U.S. Pat. No. 5,395,620). Applicants respectfully traverse.

In the Office Action, it is asserted that the applicants have just recognized another advantage of using the claimed microparticles which would flow naturally from following the teachings of Rinaldi. In addition, the Office Action maintains that the microcapsules of Rinaldi are within the scope of the present claims. Applicants again respectfully disagree.

As previously explained, Applicant's invention, as defined by independent claim 1, concerns a composition for enhancing the action of Vitamin A on the cellular activity of an individual. The composition includes a plurality of dispersed microspheres. A first group of microspheres include Vitamin A and an antioxidant inserted into the microspheres. In addition, a second group of microspheres include Vitamin C inserted into them. Moreover, the microspheres are made of biologically active material. Applicants have discovered a way to achieve a system which is capable of providing stability to the vitamin C in a aqueous medium through the addition of PVA, which polymer forms a network within the microcapsule thus avoiding the diffusion of vitamin A and vitamin C to the bulk formulation.

Rinaldi discloses soft gel compositions wherein vitamin A and C are impregnated into microparticles. The soft gel composition also includes a silicone oil or silicone oil emulsion that is in contact with the microparticles. As previously conceded, Rinaldi fails to teach or fairly suggest using biologically active microcapsules. In other words, the Office Action has conceded that the microparticles are not the same nor of the same scope as the claimed microspheres made of biologically active material. Huc fails to remedy at least this deficiency of Rinaldi. Huc describes microcapsules which are not compatible with the composition described by Rinaldi. For example, if the microcapsules of Huc were placed in a oily medium (i.e. the silicone oil medium or oil emulsion medium used by Rinaldi), the vitamin A would permeate to the medium. Furthermore, if the microcapsules were placed in an aqueous medium, the vitamin C would permeate to the medium and, as a result, no longer protect the active ingredient in the formulation. In other words, the vitamin C would degrade. Accordingly, for the reasons described above, neither Rinaldi nor Huc provide the requisite motivation to those of ordinary skill in the art to modify the invention of Rinaldi with the teachings of Huc as suggested by the Office Action. This is because, as stated above, Huc's microcapsules are simply not compatible with the soft gel composition described by Rinaldi.

Rinaldi and Huc actually teach away from the other. Rinaldi teaches that its soft gels are not compatible with water because the water will degrade the gelatin shell of the soft gel. *See Column 1, Lines 40-45*. This is why Rinaldi specifically uses non-biologically active microparticles. In contrast, Huc teaches using particles which are biocompatible because they are made of atecollagen (a derivative of collagen). *See the Abstract*. Applicants note that gelatin is also made of collagen. Thus, Rinaldi specifically teaches away from using collagen containing particles as they would degrade. In other words, Huc's microcapsules are simply not compatible with soft gel formulations of Rinaldi. Moreover, using Huc's collagen containing particles would actually ruin the composition of Rinaldi. The M.P.E.P. teaches, "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)." MPEP § 2143.01. Accordingly, not only does Rinaldi and Huc fail to provide the requisite motivation to those of ordinary skill in the art to modify the invention of Rinaldi with the teachings of Huc, there is also no reasonable expectation of success.

The Office Action has previously asserted that it is well known the vitamin C and vitamin E would permeate to their respective hydrophilic and hydrophobic environment and that the skilled artisan would take preventive measures. However, there is no teaching in either cited documents which suggests addressing the problem. Moreover, the Office Action fails to provide any evidence that those of ordinary skill in the art would recognize such problems and know how to compensate for them. As stated above, it is the Applicants that have discovered a way to achieve a system which is capable of providing stability to the vitamin C in a aqueous medium through the addition of PVA, which polymer forms a network within the microcapsule thus avoiding the diffusion of vitamin A and vitamin C to the bulk formulation. Hence, this rejection is improperly based on hindsight. Moreover, it is improper to determine whether a person of

ordinary skill would have been led to this combination of references based upon hindsight. In re Sang Su Lee, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002).

The above Remarks overcome the rejection. Thus, reconsideration and withdrawal of the rejection are respectfully requested.

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Applicants respectfully submit that this Amendment and the above remarks obviate all of the outstanding rejections in this case, thereby placing the application in condition for immediate allowance. Allowance of this application is earnestly solicited.

If any fees are due in connection with the filing of this Request for Reconsideration, such as fees under 37 C.F.R. §§ 1.16 or 1.17, please charge the fees to our Deposit Account No. 02-4300; Order No. 032286.006.

Respectfully submitted,

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